

**CIVILIAN OFFICE OF POLICE ACCOUNTABILITY****25 January 2018  
Log #1076367/U #15-015**

**TO:** Deputy Chief Administrator  
Civilian Office of Police Accountability<sup>1</sup>

**FROM:** Major Case Specialist 1 #XXXX

**SUBJECT:** Log #1076367  
U #15-015

**REFERENCE:** RD# HY XXXXXX (Aggravated Assault to PO: Handgun)  
ATF Case #772020-15-0041

**DATE/TIME:** 27 July 2015, 1649 hours

**INVOLVED OFFICER #1:** Officer A; Chicago Police Officer, Star #XXXX; Unit XXX (Detailed to ATF Joint Task Force); White Male; Employee #XXXX; DOB: XXXX; DOA: XXXX; On Duty; Plainclothes; Beat XXXX.

**OFFICER #1's WEAPON:** Glock Model 26; 9mm semi-automatic pistol; Serial #XXXX; City Registration #XXXX; FOID #XXXX; Fired five (5) times.

**OFFICER #1's INJURIES:** None reported

**INVOLVED OFFICER #2:** Officer B; Chicago Police Officer; Star #XXXX; Unit XXX (Detailed to ATF Joint Task Force); Black Male; Employee #XXXX; DOB: XXXX; DOA: XXXX; On Duty; Plainclothes; Beat XXXX.

**OFFICER #2's WEAPON:** Unknown. Did Not Fire.

**OFFICER #2's INJURIES:** None Reported.

**SUBJECT:** Subject 1; Black Male; DOB: XXXX; XXXX W. 14<sup>th</sup> Street, Apt. #4 Chicago Heights, IL 60411; Tele: XXXX. IR #XXXX.

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<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

**SUBJECT'S****INJURIES:** One (1) gunshot wound above the right knee. Fracture to the right femur.**SUBJECT'S****WEAPON:** Bersa/FCA Arms/ Industrial Argentina Model .380; 380 Caliber semi-automatic pistol; Serial #B17304.**LOCATION:**

XXXX Donovan Drive, Chicago Heights, IL 60411 (Alley)

**TIME OF IPRA****NOTIFICATION:** 27 July 2015, 1728 hours**TIME OF IPRA****RESPONSE:** 27 July 2015, 1855 hours**INTRODUCTION:**

On 27 July 2015, at approximately 1649 hours, Chicago Police Officers A and B, who were detailed to the Alcohol, Tobacco, Firearms, and Explosives Joint Task Force (ATF), were assigned as surveillance officers during an undercover buy of illegal firearms using a confidential informant (NFI)<sup>2</sup>. It was arranged that the confidential informant would buy the firearms from Subject 1. Officers A and B observed the confidential informant drive a vehicle south on Donovan Drive and then west into the 15<sup>th</sup> Street and 15<sup>th</sup> Place. The confidential informant then parked his vehicle in the alley behind the apartment building at XXXX Donovan Drive. A few moments later an ATF Supervisor radioed the team of officers to intervene because the confidential informant was being robbed and possibly in danger. Officer A drove their unmarked vehicle into the alley and stopped behind the confidential informant's vehicle, and Officers A and B exited their vehicle. Officer A exited the vehicle with his weapon drawn and identified himself as a police officer. Subject 1 exited the vehicle from the rear seat on the driver's side holding a semi-automatic handgun. Officer A ordered Subject 1 to drop the firearm. Subject 1 pointed his firearm at Officer A, who discharged his firearm several times at Subject 1. One of the fired bullets struck Subject 1 on the front of his right thigh, near his knee. Subject 1 was subsequently taken into custody.

**APPLICABLE RULES**

Chicago Police Department General Order, GO 03-02-03; Deadly Force

**INVESTIGATION:**

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<sup>2</sup> To protect the identity of their confidential informant and the integrity of their investigation, the ATF did not provide IPRA with copies of any ATF reports or any evidence relative to this incident.

CPD Reports

**General Offense Case Report (RD# XXXXXX)** instructed the reader to refer to the Bureau of Alcohol, Tobacco, Firearms, and Explosives Case #772020-15-0041. (Att. 7)

Officer A's **Tactical Response Report (TRR)** and **Officer's Battery Report (OBR)** characterized Subject 1 as an Assailant whose use of force was likely to cause death or great bodily harm, adding that Subject 1 was armed with a .380 semi-automatic pistol. The TRR stated that Officer A discharged his firearm five times at Subject 1. (Atts. 8, 9)

In his **Synoptic Report**; Sgt. A, #XXXX, from the Bureau of Internal Affairs, reported that on 27 July 2015 he responded to Chicago Police Department's Area South Detective Division. At 2115 hours, Sgt. A provided Officer A with the "Notice of Alcohol and Drug Testing Following a Firearm Discharge Incident" form and then began the twenty-minute observation period of Officer A. At 2138 hours Sgt. A collected a urine specimen from Officer A, and at 2150 hours Officer A submitted to the Breath Test. Officer A registered a BrAC<sup>3</sup> reading of .000. Officer A's urine specimen was tested and was found to be negative for all substances listed on the Substance Abuse Panel.<sup>4</sup> (Att. 17)

Other Reports

During a **canvass** on 12 August 2015, Civilian 1 stated that she did not witness the incident, but believed her neighbor, Civilian 2<sup>5</sup>, was a witness to this incident. An attempt to contact Civilian 2 at her residence was unsuccessful and a contact card was left in her doorjamb. This canvass did not produce any additional witnesses or relevant information. (Att. 18)

A **second canvass** conducted on 03 September 2015 did not produce any additional witnesses or relevant information. (Att. 20)

**Medical Records** obtained from St. James Hospital in Chicago Heights, Illinois, stated that on 27 July 2015, Subject 1 was brought to the hospital by Chicago Heights Fire Department Ambulance. The records continued that Subject 1 sustained a gunshot wound to his right thigh. X-rays revealed a fracture to Subject 1's right femur and several bullet fragments lodged in his right leg. Subject 1 was treated and listed in stable condition. (Att. 36)

The **ATF's Task Force utilized hidden cameras** during the illegal firearms purchase. The first hidden camera was worn on the front of the confidential informant's body. The recording from the confidential informant's hidden body camera did not show him or Subject 1. The camera was mostly pointed toward the vehicle's steering wheel and front windshield. The audio recorded the

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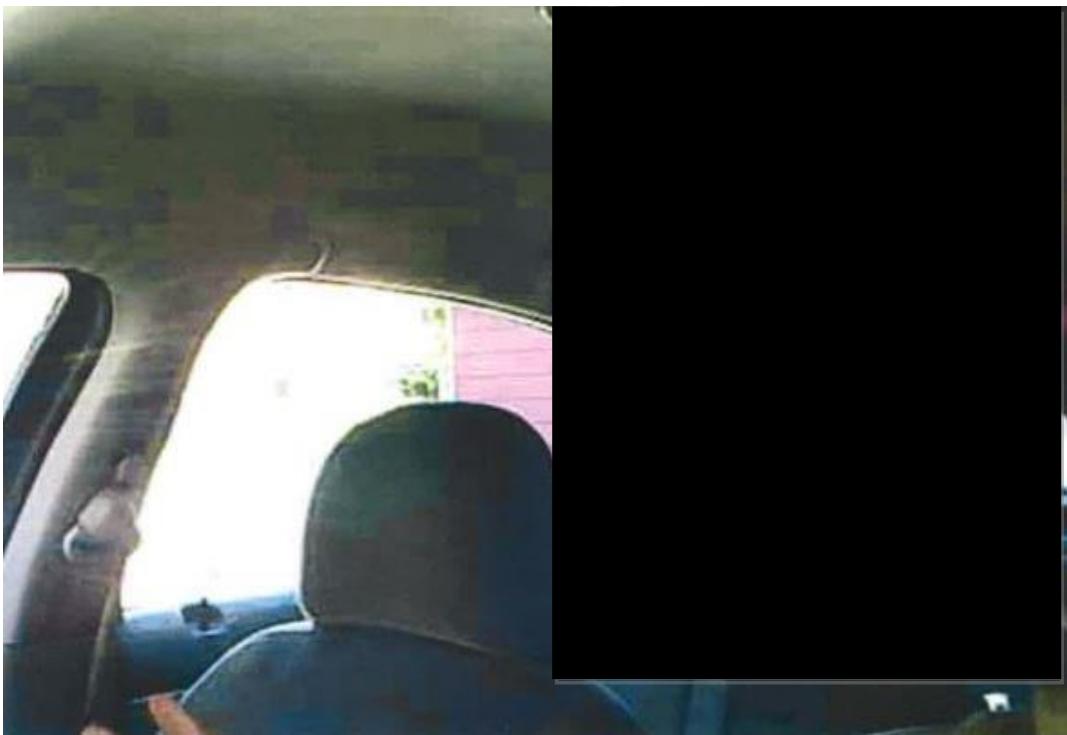
<sup>3</sup> Breath Alcohol Content.

<sup>4</sup> Amphetamines; barbiturates; benzodiazepines; cocaine metabolites; methadone; MDA-Analogues; opiates; oxycodones; phencyclidine; and propoxyphene.

<sup>5</sup> In a subsequent telephone call, Civilian 2 stated that she was sitting in her car, parked in the parking lot, when she saw several police officers with their guns drawn approaching another car in the parking lot. Civilian 2 heard gunshots and ducked down. Civilian 2 did not see the shooting. After the shooting ceased, Civilian 2 exited her car and ran into her apartment building. (Att. 20)

confidential informant calling Subject 1 “Subject 1.” A few moments after the confidential informant parks his vehicle, the confidential informant can be heard saying, “You ain’t got to rob me.” Subject 1 repeatedly orders the confidential informant to hand him the money only using his right hand. Subject 1 threatened the confidential informant by saying, “Don’t make me use this motherfucker.” Subject 1 then ordered the confidential informant to take the keys out of the vehicle’s ignition and place his hands on the ceiling of the vehicle. Sirens can then be heard in the background, followed by indecipherable yelling, and then what sounds like five gunshots. More yelling can be heard and Subject 1 can be heard repeatedly saying, “I’m hit, I’m hit.” An unknown person was also heard repeatedly saying, “Get on the ground,” and “motherfucker.” A few moments later the confidential informant exited the vehicle and he can also be heard saying, “I’m hit.”<sup>6</sup> The confidential informant’s body camera did not show who he was speaking to. The confidential informant’s body camera did not visually record the incident with Subject 1 and the police officers. (Att. 35)

The second ATF camera<sup>7</sup> was hidden inside the confidential informant’s vehicle that was positioned to have a view of the interior of the front and back seats of the vehicle driven by the confidential informant. Still photographs from the first hidden camera depicted Subject 1 taking money from the confidential informant. The photographs also show Subject 1’s face and him leaning forward and pointing a semi-automatic handgun at the confidential informant. Subject 1 held the handgun in his right hand. (Att. 33)



CPD

<sup>6</sup> Due to the ATF’s reluctance to release any information that may compromise the safety of the CI, IPRA was unable to determine whether the confidential informant had been struck. CPD On Scene Incident Commander stated that the confidential informant may have been struck by a fired bullet or shrapnel. (Att. 4)

<sup>7</sup> To protect the identity of their confidential informant and the integrity of their investigation, the ATF did not provide a copy of this recording because it would show the confidential informant. The ATF did provide 7 still images from this recording.

Officers' Interviews

In a statement to IPRA on 06 August 2015, **Officer A** stated that on the day of this incident he and his partner, Officer B, were on-duty and assigned to the ATF<sup>8</sup> Task Force. Officer A stated that they were asked to assist another ATF group that was short on manpower. They met this other ATF Group in the parking lot of a Chicago Heights Home Depot.

They were debriefed and told that this team was using a confidential informant to buy handguns from a person they later learned was Subject 1. Officers A and B were assigned as surveillance officers. They knew what the confidential informant looked like and that he was driving an older model gray Ford Taurus with temporary license plates. Officer A explained that he and Officer B were driving an unmarked, gray Ford Explorer. He also explained that they were working in a covert capacity and not wearing protective vests or anything that outwardly showed they were law enforcement.

Officers A and B had radio contact with the other members of the team, but the microphones hidden inside the covert car that the confidential informant and Subject 1 were in did not work properly, and failed to transmit to the all the members of the ATF team what was being said inside the car.

Officer A stated that confidential informant met Subject 1 in the parking lot of the Pepe's Restaurant on Route 30 in Chicago Heights. Other members of the ATF team followed the covert car, which eventually parked in the rear parking lot of the apartment building at XXXX Donovan Drive. Officers A and B parked their vehicle on the southeast corner of the alley and Donovan Drive with a partial view of the covert car parked in the lot.

Between five and ten seconds after the covert vehicle parked, ATF Supervisor A said over the radio, "It's a rip, initiate, go save 'em."<sup>9</sup> Officer A explained that a "rip" means that the confidential information is being held at gunpoint or that the money is being forcefully taken from him. Officer A further advised that "initiate" essentially means to approach the scene, engage the parties, and save the confidential informant. Officer A drove into the alley and stopped his vehicle near the rear of the covert vehicle. Officer A explained that the front passenger side quarter panel of his vehicle was nearest the covert vehicle's trunk.

Officer A exited the driver's side of his vehicle and proceeded to walk around the front of his vehicle toward the covert vehicle. At this point Officer A saw a person<sup>10</sup> in the backseat, behind the driver, of the covert vehicle. Officer A immediately commanded, "Let me see your hands, motherfucker." Subject 1 exited the rear driver's side door holding a firearm in his hand. Officer A was standing approximately fifteen to eighteen feet away from, and at a 45-degree angle from, the covert vehicle's rear driver's side door as Subject 1 exited. Officer A also stated that Subject 1 exited the vehicle, placed both his feet on the pavement, and while in a crouched position turned his body to face Officer A while pointing his handgun at Officer A. Officer A then repeatedly discharged his firearm at Subject 1 several times as he retreated backwards in a southwestern

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<sup>8</sup> Bureau of Alcohol, Tobacco, Firearms and Explosives.

<sup>9</sup> Transcript of PO A; P. 13, L. 26.

<sup>10</sup> NKA Subject 1.

direction in the alley. Subject 1 first dropped to his knees, then dropped his firearm on the pavement while saying "I dropped it, I dropped it."<sup>11</sup> Officer A stated that he stopped firing once Subject 1 dropped his handgun. Officer A ran over and handcuffed Subject 1.

Officer A stated that he ripped up a piece of paper and used the pieces and rocks to mark where his fired casings landed because he was afraid that so many people were responding so quickly that the casings might get kicked, moved, or not found. Officer A stated that he found all five of his fired casings. (Att. 12)

In a statement to IPRA on 06 August 2015, **Officer B** gave a substantially similar account as his partner Officer A as to the foundation of the incident. Officer B explained that he and Officer A were detailed to the ATF Task Force, and on the day of this incident they were asked to assist another ATF team who was using a confidential informant in a pre-arranged illegal gun purchase. The illegal gun purchase was arranged to occur in Chicago Heights, Illinois. Officer B stated that he and Officer A met with the other ATF team in a parking lot in Chicago Heights, at which time they were debriefed and assigned to conduct surveillance of the illegal transaction. Officer B stated that during the debriefing, they also met the confidential informant and were informed that he was driving a silver Taurus.

After the debriefing, Officers B and A proceeded to XXXX S. Donovan Drive, Chicago Heights and parked their unmarked SUV near the southeast corner of that intersection. Officer B explained that although the confidential informant was wearing a hidden microphone, he and Officer A were unable to connect to it and therefore did not hear what transpired in the confidential informant's vehicle. ATF Supervisor A gave the team, including Officers B and A, a "play by play"<sup>12</sup> in real time as the incident was unfolding.

Officer B stated that from where he and Officer A were parked, he saw the confidential informant's vehicle drive into the rear parking lot of the apartment complex. Officer B stated that he could not see how many occupants were in the confidential informant's vehicle. Officer B also explained that he lost sight of the confidential informant's vehicle once it turned into the parking lot due to other parked cars. A few seconds later Officer B heard ATF Supervisor A say over the radio, "Initiate, initiate."<sup>13</sup> Officer B explained that they were being instructed to "go to that location and help that particular person in the situation."<sup>14</sup> Officer B stated that Officer A drove into the alley and then parked perpendicular behind the confidential informant's vehicle. Officer B stated that the passenger side of their vehicle was closest to the trunk of the confidential informant's vehicle. Officer B stated that he had a partial view of the confidential informant, who was seated in the driver's seat. Officers B stated that he and Officer A exited their vehicle. Officer B explained, "I go to the passenger side of the vehicle. Um, I'm looking around, tryin' to assess the situation. Um, I'm lookin' to see like if it's a robbery, is somebody runnin'. Is it another vehicle involved. I'm lookin' around, tryin' to assess the situation and that was it."<sup>15</sup>

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<sup>11</sup> Transcript of PO A; P. 20, L. 10.

<sup>12</sup> Transcript of PO B; P. 12, L. 3.

<sup>13</sup> Transcript of Officer B; P. 14, L. 3.

<sup>14</sup> *Id*; P. 14, L. 11.

<sup>15</sup> *Id*; P. 18, L. 1.

Officer B stated that although he had an obstructed view of the confidential informant sitting in the driver's seat, he did not see Subject 1 in the vehicle. Officer B stated that after Officer A exited their car he (Officer A) approached the driver's side of the confidential informant's vehicle. Officer B stated that he heard Officer A announce his office by saying, "Police, motherfucker."<sup>16</sup> Officer B could not tell who Officer A was speaking to. Officer B saw Officer A point and discharge his firearm several times at the vehicle. Officer B stated that he heard 4 or 5 gunshots, and added that he did not know what Officer A was firing at. Officer B moved around the trunk of the confidential informant's vehicle to the driver's side and saw Subject 1 lying on the pavement. Officer B stated that he heard Subject 1 say words to the effect, "'I dropped it' or somethin'."<sup>17</sup> Officer B stated that he also saw a semi-automatic handgun on the pavement about a foot from Subject 1. Officer A then handcuffed Subject 1. Officer B stated that while Officer A was handcuffing Subject 1, he (Officer B) kicked the gun away from Subject 1. Officer B explained that he did so because the gun was within reach of Subject 1. Officer B stated that several ATF Agents arrived and began to assist. Officers B and A used pieces of torn paper to mark Officer A's fired casings. Officer B stated that none of the ATF agents were present at the time of the shooting. (Att. 14)

#### Civilian Interviews

In a statement to IPRA on 03 May 2016, **Subject 1** stated that on the day of this incident he exchanged several phone calls with a person(s) he refused to identify. Subject 1 also refused to say what was said during those phone calls. Subject 1 would not say if those telephone calls were related to this incident.

Subject 1 stated that he was in the vehicle driven by the confidential informant. Subject 1 stated that he sat in the backseat, behind the confidential informant in the driver's seat. Subject 1 refused to explain why he was in the car or where they were going, but added that the federal agents alleged he was attempting to sell guns to the confidential informant. Subject 1 stated that they parked in a parking lot behind an apartment complex. Subject 1 admitted that he had a handgun that he described as a silver .380 Bersa he bought on the street. Subject 1 stated that he held the handgun in his right hand. When asked whether he had attempted to rob the confidential informant, he refused to answer. Subject 1 also refused to answer whether he pointed the handgun at the confidential informant.

Subject 1 stated that was going to go home, at which point he opened the rear driver's side door. He was still holding the handgun in his right hand and had fully exited the vehicle when he immediately heard several gunshots. Subject 1 noted in his interview that he did see the police vehicle but not see any police lights, nor did he see any vests or police shirts or flashlights, and he did not hear the officers announce their office.<sup>18</sup> Subject 1 stated that he did never heard the officers say anything. Subject 1 stated that he was struck in the front of his right thigh, near his knee, that shattered his femur. Subject 1 fell to the pavement and the officers ran to him. Subject 1 repeatedly said, "I'm hit, I'm hit, I'm hit, I'm hit."<sup>19</sup> Subject 1 was placed into custody and

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<sup>16</sup> *Id*; P. 20, L. 30.

<sup>17</sup> *Id*; P. 23, L. 19.

<sup>18</sup> Transcript of Subject 1; P. 20, L.25; P.21, L. 9; P. 26, L. 31; et al.

<sup>19</sup> *Id*; P. 19, L. 21.

subsequently transported by ambulance to St. James Hospital in Chicago Heights. Subject 1 added that the confidential informant had also been shot, but he did not know where or how many times.

Subject 1 stated that he did not see the officers until after he fell to the pavement when he was shot. Subject 1 did not know where the officers were positioned when he was shot. Subject 1 denied pointing his handgun at any police officer prior to being shot, stating “I didn’t point no gun at nobody”<sup>20</sup>. Subject 1 explained that when he heard the gunshots he immediately thought the confidential informant sent people to kill him.

Subject 1 stated that he was familiar with the confidential informant, and that he had previously met him through a mutual friend. Subject 1 did not know the mutual friend’s full name or contact information. Subject 1 also stated that at the time of the incident he did not know that the confidential informant was a federal informant. (Att. 32)

## **ANALYSIS**

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<sup>20</sup> *Id.* P. 20, L. 20

This investigation found that Officer A's use of deadly force was in compliance with Chicago Police Department policy and Illinois State statutes. According to the Chicago Police Department's General Order 03-02-03, III:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
  1. to prevent death or great bodily harm to the sworn member or to another person, or;
  2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
    - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
    - b. is attempting to escape by use of a deadly weapon or;
    - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

A Chicago Police Officer is permitted to use deadly force based on: Chicago Police Department's Policy regarding the use of deadly force, Illinois State Statute, and applicable standards within the United States Constitution. Based on the totality of the circumstances, Officer A was justified in using deadly force because it was reasonable for him to believe that he and his partner were in danger of death or great bodily harm, given that Subject 1 had just robbed the confidential informant at gunpoint and was attempting to exit the vehicle when Officer A arrived on scene.

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003).

The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). This reasonableness calculation 'must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.' *Graham*, 490 U.S. at 396-97. Consequently, "when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v.*

City of Chicago, 316 F.3d 380, 383 (7th Cir. 2002) (*quoting Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)).

Officers A and B were working with an ATF task force, serving as surveillance on a pre-arranged illegal gun purchase in a parked car, involving a confidential informant. Although there was a technical difficulty and the officers could not hear what was transpiring, an ATF agent could hear the incident and was relaying descriptions to the officers. The ATF agent then advised that the confidential informant was being robbed, and ordered the officers to approach the scene and apprehend Subject 1. According to Officer A, the officers then drove up to the scene and Officer A ordered Subject 1 to show his hands. Subject 1 exited the vehicle and turned, pointing a gun at Officer A. Officer A then discharged his firearm several times at Subject 1, at which time Subject 1 fell to his knees and dropped his firearm.

Officer B was unable to see Officer A's interaction with Subject 1, due to his positioning. Subject 1 states that he never pointed his weapon at the officers because he never saw the officers. However, it is the natural and logical conclusion that Subject 1 was expecting to see law enforcement officers, considering that sirens were audible to Subject 1 while he was still inside the CI's vehicle, evidenced by audible sirens heard on video of the interior of the vehicle. Additionally, Officer B remembers Officer A saying "police, motherfucker," while Officer A recalls it as "let me see your hands, motherfucker." Even if Officer A did not explicitly announce his office by using the word "police," Subject 1 still had sufficient notice that the officers were law enforcement, given the sirens and the command given by Officer A.

As police officers, Officer A is bound by the legal standard in Illinois regarding the use of deadly force, as codified in Illinois State Statute 720 ILCS 5/7-5. The pertinent part of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...

In this case, given that Officer A had just been informed that Subject 1 had just robbed the informant at gunpoint, which is a forcible felony, and Subject 1 was pointing his weapon at Officer A, it is clear beyond a preponderance of the evidence that Officer A reasonably believed that discharging his firearm at Subject 1 was necessary to prevent death or great bodily harm to himself, his partner, the confidential informant, and any other persons that happened to be in the area. As stated in *Tennessee v. Garner*, "...[if] there is probable cause to believe that [the suspect] has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape ..."<sup>21</sup>

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<sup>21</sup> *Tennessee v. Garner*, 471 U.S. 1, 11 (1985)

There is no consensus among the witnesses regarding whether Subject 1 had pointed his gun at the officers: Subject 1 claims that he did not point his weapon at Officer A; Officer A says he did; Officer B's view was blocked; and ATF prohibited the confidential informant from being interviewed in order to protect his identity. However, this point does not significantly alter the analysis, as case law suggests that even if Subject 1 had not pointed his gun at Officer A, Officer A was justified in using deadly force at the moment he saw Subject 1 jump out of the vehicle with a firearm in his hand, rather than waiting for Subject 1 to aim and fire upon Officer A. Officer B, the confidential informant, or anyone else in the area. In this case, Officer B and the confidential informant were arguably in more danger than Officer A himself. Officer B was in more danger, because based on his positioning he could not even see what Subject 1 was doing and therefore would not necessarily know he needed to protect himself at that moment. The confidential informant was in more danger, because he was unarmed, within inches of Subject 1, and had already been threatened with the gun during the armed robbery. Finally, the main role Officer A was serving on this mission was to protect the confidential informant, therefore he needed to ensure that Subject 1 could not shoot the confidential informant. Thus, even if Subject 1 had not pointed the weapon at Officer A, Officer A was permitted to use deadly force against Subject 1.

Courts, in this jurisdiction and across the country, have repeatedly and broadly accepted the notion that officers are not required to wait to act until an armed person actually uses deadly force against the officer. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (“... an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force); see also *Leong v. City of Detroit*, 151 F.supp.2d 858 (E.D.Mich. 2001), holding that regardless of whether the suspect actually pointed his gun at the officers, or instead remained with his back turned, he was quite capable of leveling the weapon at an officer or a bystander and inflicting severe injury or death in an instant, and therefore the use of deadly force was permitted; see also *Anderson v. Russell*, 247 F.3d 125 (4<sup>th</sup> Cir. 2001), holding that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action; see also *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007), (“Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”)

Therefore, Officer A's use of deadly force against Subject 1 was objectively reasonable, and thus, WITHIN the policy of the Chicago Police Department, as well as in compliance with Illinois state statutes and the applicable standards within the United States Constitution.

Approved:

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Deputy Chief Administrator 1